IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

THE HON'BLE MR. JUSTICE A. GOPAL REDDY

WRIT PETITION Nos. 22558 AND 26024 OF 1995

DATED: 18-03-2006

WRIT PETITION No. 22558 OF 1995

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BETWEEN:

Nallamilli Subbi Reddi and another

.....Petitioners

AND

The District Collector (Land Acquisition),

West Godavari, Eluru and three others

.....Respondents

WRIT PETITION No. 26024 OF 1995

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BETWEEN:

Vimjamuri Srinivas and another

.....Petitioners

AND

The District Collector (Land Acquisition),

West Godavari, Eluru and two others

.....Respondents

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THE HON'BLE MR. JUSTICE A. GOPAL REDDY

WRIT PETITION Nos. 22558 AND 26024 OF 1995

COMMON ORDER:

Since the question involved in both the writ petitions is one and the same, they are disposed of by this common order. These writ petitions are filed challenging the notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') and the declaration made under Section 6 of the Act.

The petitioners are the owners of the land in question which was acquired under the provisions of the Act whereunder draft notification under Section 4 of the Act was approved by the Collector on 28-03-1995 and published in the District Gazette on 03-04-1995 and in 'Praja Shakti' Telugu daily newspaper on 1-4-1995. The draft declaration under Section 6 of the Act which was made on 31-03-1995 was published in the District Gazette on 05-04-1995 and the same is subject matter of challenge.

It is the case of the petitioners that they are small farmers and when dry lands are available for acquisition for providing as house sites, acquisition of their lands which are wetlands by the authorities is arbitrary and illegal. It is their further case

that the notification under Section 4(1) of the Act has not been published in two local newspapers and also in the locality as mandated by the Act and that the authorities have dispensed with the enquiry under Section 5-A of the Act mechanically even though there is no urgency and therefore, the notifications are liable to be set aside for not following the mandatory requirements of the Act.

This Court passed an interim order not to dispossess the petitioners from the lands in question on 10-10-1995. Even after ten years, no counter affidavit has been filed by the Land Acquisition Officer. Learned Government Pleader who produced the records fairly concedes that the notification has not been published in two local newspapers and also in the locality, which is mandatory. Apart from the same, the file produced also discloses that the Mandal Revenue Officer submitted the proposal for acquisition on 25-01-1994 for issuance of draft notification and draft declarations which were approved by the Collector on
28-03-1995 and 31-03-1995 respectively were published on
1-4-1995 in the newspapers and the district gazette on 3-4-1995 and 5-4-1995 respectively.

The apex Court in ***STATE OF UP V. RADHEY SHYAM NIGAM*** while interpreting Section 17(4) of the Act held as under:

> *"It is true that the expression "after the date of the publication of the notification" introduced in S.17(4) can be explained away as making no change from the provisions of law by reading it along with the amendment made in Section 4 whereby in different situation in S.4, the last date of publication of the notice has been determined as the date of the publication and similarly in S.6 a date of the publication of the notice has been provided for. But the words "after the date of the publication of the notifications" in sub-sec. (4) of S.17 read simplicitor clearly indicate that declaration under S. 6 had to be made after the publication of the notification meaning thereby subsequent to the date of the publication of the notification. It appears to us that there is nothing in the scheme of the Act which militates against such a construction. The fact that at times where emergency provisions are invoked emergent action may be taken but in such a situation in view of the state of law that was*

before it, the legislature has made a conscious change which cannot be explained away merely because this is as a consequent of the changes Ss. 4 and 6 of the Act".

In view of the law declared by the Supreme Court, the writ petitions are liable to be allowed and they are accordingly allowed setting aside the impugned notifications. No order as to costs.

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A. **GOPAL REDDY, J**

21-03-2006

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